IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4411 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHOGILAL TRIBHOVANDAS PATEL THRO' POA MUKESHBHAI C PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4411 of 2001

MR AJ PATEL for Petitioner No. 1-3

Mr. Sen AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/09/2001

ORAL JUDGEMENT

Heard learned advocate Mr. A.J. Patel for the petitioners and Mr. Sen, learned AGP for the respondents. In this petition, rule was issued by this court on

22.6.2001 and notice as to interim relief was issued and returnable on 13.7.2001. Brief facts of the present petition are as under:

The predecessor in title of the petitioners filed form in respect of his holding under section 6(1) of the ULC Act on 11.8.1976. On 10.6.1983, the competent authority and the Deputy COllector, Baroda declared that the holder was entitled to retain 1311 sq. mtrs. out of survey No. 892 and that the land ad measuring 1623 sq. mtrs. out of the said survey number was surplus under the provisions of the ULC Act. On 18.9.1987, the Urban Land Tribunal, Ahmedabad held in appeal filed by the holder that the holder was not holding any excess vacant land under the ULC Act. Thereafter, on 16.1.1991, the competent authority and the additional collector, ULC, Baroda granted permission to the holder to sell the land in question to Punambhai N. Patel and others under section 26(1) of the ULC Act. Thereafter, on 13.4.1993, land ad measuring 1467 out of survey no. 892 of village Gotri was mutated in the name of the petitioners on the basis of the sale deeds executed in favour of the petitioners. On 15.5.1993, the aforesaid mutation entry was certified by the Mamlatdar, Baroda. Two separate permissions to sell the entire survey no. 892 of village Gotri to the petitioners were granted by the competent authority on 12.7.1996. Thereafter, the land in question was mutated in the names of the petitioners on the basis of the permissions granted by the competent authority on 20.7.1996. Thereafter, on 14.9.1996, the aforesaid mutation entry was certified by the circle officer, Baroda after proper verification.

Thereafter, the competent authority, Baroda published a computerised list showing details of the lands of village Gotri of which possession was taken by the Government under the provisions of the ULC Act and which were deemed to have vested in the State Government. In view of that, on 28.9.1999, the petitioners made an application to the competent authority, Baroda on 28.9.1999 to delete the land of survey No. 892 from the aforesaid computerized list prepared by the competent authority. The petitioners also moved an application to the Commissioner, Land Reform and Secretary, Revenue department, Gandhinagar for doing justice. Thereafter, in April, 2001, representative of the petitioners had approached personally the respondent No.2 and request was made to dispose of the application of the petitioners for deleting the survey no. 892 of Gotri from the computerised list prepared by him. Thereafter, representative of the petitioners approached the land

reform commissioner and secretary revenue department, Gandhinagar but of no avail and, hence, the petitioners have filed this petition with a prayer to direct the respondents to delete land bearing survey No. 892 of village Gotri Taluka and District Baroda from the computerised list at Annexure "H" to the petition.

In this petition, the respondents have not filed any affidavit in reply. However, learned A.G.P. Mr. Sen appearing for the respondent authority has made his submissions on the basis of the original file. From the correspondence between two officers from the original file, he has drawn attention of this court to the letter dated 23rd June, 2000 issued by the competent authority and addressed to the Deputy Secretary, Revenue Department, Gandhinagar wherein the competent authority has pointed out to the Deputy Secretary that through mistake, land in question has been included in the computerised list and it has been stated through mistake that the land in question has vested in the State Government under the provisions of the Act. In the said letter, request has been made by the competent authority to the Deputy Secretary to have necessary instructions for deleting the said entry made at Sr. no. 179 in the computerized list (Annexure "H"). By pointing out this correspondence from the original file, learned AGP Mr. Sen has pointed out that the request made by the petitioners was processed by the competent authority and recommendation has been made by the competent authority to the Deputy Secretary Revenue Department but no final decision so far has been taken by the respondent authorities.

In view of these facts, learned advocate Mr. A.J. Patel has submitted that when prima facie looking to this letter dated 23.6.2000, mistake has been committed by the competent authority while publishing computerized list wherein it was mentioned through mistake that the land in question has vested in the Government and the possession has been taken over by the State Government. This is the clear cut mistake on the part of the competent authority in mentioning that the land survey no. 892 ad measuring 1623 sq. mtrs. has vested in the Government and possession thereof has been taken over by the State Government. These facts would also appear upon perusal of the record produced by the petitioner wherein finally by order passed by the competent authority and the Deputy Collector dated 10th June, 1983 wherein in respect of the survey no. 892, total land has been declared excess ad measuring 1623 sq. mtrs. and that order was challenged by the original land

holder and the appellate authority passed order which is at page 21 in Appeal No. UL/Baroda/103 of 1983 wherein the appeal was allowed and the order of the competent authority and the Deputy Collector has been set aside and it was held that the appellant original land holder was not holding any excess vacant land and, therefore, in the result, there was no excess vacant land held by the original holder. Therefore, considering the order passed by the appellate authority and also considering the letter dated 23.6.2000 issued by the competent authority addressed to the Deputy secretary, according to my opinion, entry no. 179 made at annexure "H" by the competent authority in respect of survey no. 892 qua land ad measuring 1623 sq. mtrs. showing it as surplus and has vested in the Government is incorrect and contrary to the order passed by the appellate authority and, therefore, entry made at Sr. No. 179 in computerized list at page 32 declaring the land ad measuring 1623 of survey No. 892 is required to be deleted and the same is hereby ordered to be deleted from the computerized list (Annexure "H" page 32) and it is hereby declared that the possession of the land in question of survey No. 892 ad measuring 1623 sq. mtrs. is with the petitioners and the land in question has not been taken over under the provisions of the ULC Act. Petition is accordingly allowed. Rule is made absolute accordingly. There shall be no order as to costs.

4.9.2001. (H.K. Rathod,J.)

Vyas